United Nations A/59/816–S/2005/350

General Assembly
Security Council

Distr.: General
27 May 2005

Original: English

General Assembly
Fifty-ninth session
Agenda item 108
Programme budget for the biennium 2004-2005

Security Council
Sixtieth year

Identical letters dated 26 May 2005 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I have the honour to refer to General Assembly resolution 58/284 of 8 April 2004 in which the Assembly requested the Secretary-General to invite the Special Court for Sierra Leone to adopt a completion strategy and also requested the Secretary-General to inform both the Security Council and the General Assembly at its fifty-ninth session about this matter.

In accordance with the above-mentioned resolution I am pleased to forward the final completion strategy, which has been prepared by the Special Court and endorsed by the Management Committee of the Court which is responsible for advising me on the non-judicial aspects of the Court's work (see annex).

(*Signed*) Kofi A. **Annan**

05-36432 (E) 200605

Annex

Special Court for Sierra Leone
Completion strategy (18 May 2005)

I. Introduction
II. Activities to date
A. Judicial and institutional activities
B. Administrative and support activities
III. Completion phase
A. Trials completion strategy
1. Courtroom capacity
2. Factors influencing the conduct of the trial process
3. Administrative factors
B. Appeals and subsequent actions
1. Appeals and transfer of sentenced persons
2. Completion of administrative and support activities
C. Proposed actions of the Special Court Management
1. Reporting to the Management Committee
2. Representations to the Organs within the Special Court
IV. Funding

Page
... 3
... 4
... 4
... 7
... 9
... 9
... 9
... 10
... 12
... 12
... 12
... 13
... 14
... 14
... 14
... 15

I. INTRODUCTION

1. The Special Court for Sierra Leone ("Special Court") began its operations in July 2002 following the signing on 16 January 2002 of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone ("Agreement"). Since then, significant progress has been made, including the recruitment of more than 300 international and national personnel; the renovation of a former Sierra Leonean prison into the Special Court Detention Facility; the setting up of pre-fabricated office facilities; the construction of a new landmark courthouse; the issuance and approval of thirteen indictments; the conduct of hearings on a number of pre-trial motions; and the start of trials. The Special Court, though still in its early stages in 2004, started its planning for the completion of its mandate as set out in the Agreement and the Statute of the Special Court for Sierra Leone ("Statute"). The initial Completion Strategy paper was approved by the Management Committee on 6 October 2004. As indicated to the Management Committee at the time of the first submission, the document will be updated at regular intervals of between 4 to 6 months and resubmitted to the Management Committee.

2. In his report on the establishment of the Special Court submitted to the Security Council in October 2000, the Secretary-General indicated that the lifespan of the Special Court would be determined by "a subsequent agreement between the parties upon the completion of its judicial activities, an indication of the capacity acquired by the local courts to assume the prosecution of the remaining cases, or the unavailability of resources."[1] The Secretary-General subsequently stated that three years would be the "minimum time required for the investigation, prosecution and trial of a very limited number of accused."[2]

3. The completion of the Special Court's mandate will be carried out in two phases. During the completion phase, the Special Court will wind-down its core activities by rendering final judgements[3] against all accused in custody and transferring those who are convicted to appropriate prisons in or outside Sierra Leone to serve their sentences. This will coincide with the winding-down of the administrative and support activities of the Special Court, and will include the downsizing of staff as well as the transfer and liquidation of buildings and equipment. Thereafter, during the post-completion phase, the Special Court will continue certain "residual activities" after it no longer exists in its current form and capacity. These activities include: the supervision of the enforcement of sentences; the continued provision of support and protection to witnesses; the conduct of contempt and review proceedings; and the conduct of proceedings against any accused who surrender or are apprehended after the Special Court winds down. A residual mechanism, whether a restructured (miniaturized) Special Court or another institution to which has been delegated the Special Court's authority, will be needed to carry out these activities.

4. This paper will focus on the completion phase and the conditions necessary for the Special Court to meet its trial-related objectives in a timely fashion and in accordance with the framework prescribed by its main stakeholders, including the Management Committee, the United Nations and the donor countries.

5. This paper has been developed by the Registrar in close co-operation with the Management Board which is made up of senior staff from the Registry, the Office of the Prosecutor (OTP) and the Office of the Principal Defender. Certain aspects have also been discussed with the Chambers. Its purpose is to provide a conceptual strategy for the completion phase of the Special Court's trials.

---

[1] Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone ("Secretary-General's Report"), S/2000/915, paragraph 28.

[2] Letter dated 12 January 2001 from the Secretary-General addressed to the President of the Security Council ("Letter dated 12 January 2001 from the Secretary-General"), S/2001/40, paragraph 12.

[3] The term "final judgements" refers to judgements which are no longer subject to appeal and which are enforceable.

II. ACTIVITIES TO DATE

A. Judicial and Institutional Activities

6. The Special Court for Sierra Leone was established on 16 January 2002 to "prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996."[4] The Prosecutor and the Registrar, who were appointed by the Secretary-General on 17 April 2002 and 10 June 2002 respectively, arrived in Freetown between 22 July 2002 and 6 August 2002. On 13 November 2002, the Government of Sierra Leone appointed the Deputy Prosecutor. This was followed, on 2 December 2002, by the swearing-in of eight Judges comprising the three-member Trial Chamber and the five-member Appeals Chamber. The Acting Principal Defender was appointed in July 2003, and the Principal Defender took office in March 2004. Following a request by the President of the Special Court on 2 February 2004, three additional Judges forming the second Trial Chamber were sworn in on 17 January 2005.

7. To date, thirteen indictments against thirteen accused have been issued by the Prosecutor and approved by a Judge. In December 2003, the indictments against Foday Saybana Sankoh and Sam Bockarie were withdrawn as a result of their deaths,[5] leaving eleven indictments still active. While the Prosecutor has indicated the possibility of additional indictments, the number would be extremely limited and possibly linked to existing indictees.

8. Of the eleven accused, nine accused are currently in the custody of the Special Court. With respect to the two remaining accused, former Liberian President Charles Ghankay Taylor was granted asylum by the Government of Nigeria in August 2003 and Johnny Paul Koroma remains at large. Efforts to have both Taylor and Koroma apprehended and transferred to the Special Court are ongoing. The Warrant of Arrest against Taylor was transmitted to the Governments of Nigeria and Liberia in November 2003, while the Warrant of Arrest against Koroma was transmitted to the Government of Liberia in December 2003. Also in December 2003, the International Criminal Police Organization (Interpol) issued "Red Notices" against Taylor and Koroma upon requests by the Special Court. Table 1 below summarises the indictments and arrests to date.

[4] Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone ("Agreement"), Article 1 (1).

[5] Prosecutor against Sam Bockarie (Case No. SCSL-03-04), "Withdrawal of Indictment," 8 December 2003; Prosecutor against Foday Saybana Sankoh (Case No. SCSL-03-02), "Withdrawal of Indictment," 8 December 2003.

Table 1. Indictment and Detention Status

Accused	Indictment Filed	Indictment Approved	Indictment/Detention Status
Sam Bockarie	3 Mar 03	7 Mar 03	Indictment withdrawn 8 Dec 03
Alex Tamba Brima	3 Mar 03	7 Mar 03	Detained since 10 Mar 03
Moinina Fofana	24 June 03	26 June 03	Detained since 29 May 03[6]
Augustine Gbao	16 Apr 03	16 Apr 03	Detained since 19 Mar 03[7]
Morris Kallon	3 Mar 03	7 Mar 03	Detained since 10 Mar 03
Brima Bazzy Kamara	26 May 03	28 May 03	Detained since 29 May 03
Santigie Borbor Kanu	15 Sept 03	16 Sept 03	Detained since 17 Sept 03
Allieu Kondewa	24 June 03	26 June 03	Detained since 29 May 03[8]
Johnny Paul Koroma	3 Mar 03	7 Mar 03	At large
Samuel Hinga Norman	3 Mar 03	7 Mar 03	Detained since 10 Mar 03
Foday Saybana Sankoh	3 Mar 03	7 Mar 03	Indictment withdrawn 8 Dec 03
Issa Hassan Sesay	3 Mar 03	7 Mar 03	Detained since 10 Mar 03
Charles Ghankay Taylor	3 Mar 03	7 Mar 03	Granted asylum in Nigeria

9. The accused who were arrested between March to June 2003 were detained in an existing Sierra Leonean prison on Bonthe Island which the Special Court had renovated along with a guesthouse for staff and visitors. On 10 August 2003, these accused were transferred from Bonthe Island to the new Special Court Detention Facility ("Detention Facility") created from the renovated former New England Prison. The Detention Facility, which comprises 18 cells, an exercise area, visiting rooms, a clinic, a small library, a kitchen and several common areas, is now fully operational. It is headed by a Chief of Detention supported by highly experienced international supervisors, a Medical Officer and Sierra Leonean correctional officers seconded from the Sierra Leone Prison Service.

10. Upon transfer to the Special Court, all accused were provided initial legal advice and assistance by duty counsel in the Special Court's Office of the Principal Defender.[9] The accused thereafter requested legal assistance on the basis of indigence or partial indigence, and were assigned Defence counsel by the Registrar or the Principal Defender. All accused are represented by teams of qualified Sierra Leonean and international Defence counsel.

[6] Provisionally detained as a suspect.

[7] Provisionally detained as a suspect and transferred to the Bonthe Island facility at on 19 March 2002.

[8] Provisionally detained as a suspect.

[9] The Office of the Principal Defender (also referred to as Defence Office), which is headed by the Principal Defender and is part of the Registry, is responsible for providing: a) initial advice and assistance to suspects and accused; b) legal assistance as ordered by the Special Court at the initial appearance; and c) adequate facilities for counsel in the preparation of the defence. Rules of Procedure and Evidence of the Special Court for Sierra Leone ("Rules"), Rule 45.

13. To facilitate the proceedings before the Special Court, a number of basic legal documents have been adopted. These include the Rules of Procedure and Evidence(amended on 7 March 2003, 1 August 2003, 30 October 2003, 14 March 2004 and 29 May 2004), the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Special Court for Sierra Leone or Otherwise Detained on the Authority of the Special Court for Sierra Leone (adopted on 7 March 2003 and amended on 25 September 2003 and 4 May 2004), the Directive on the Assignment of Counsel (adopted on 1 October 2003), and various Practice Directions on procedural matters.[17]

14. Finally, in his capacity as the channel of communications for the Special Court, the Registrar has negotiated and concluded cooperation agreements with States and organisations on various matters. These include the Memorandum of Understanding with the United Nations Mission in Sierra Leone (UNAMSIL); the Exchange of Letters with the International Committee of the Red Cross; the Co-operation Agreement between the International Criminal Police Organization - Interpol and the Special Court; and the Headquarters Agreement with the Government of Sierra Leone. Agreements with States on the relocation of witnesses (which are confidential by their nature) as well as contributions of personnel and funding have also been concluded. Negotiations on other co-operation agreements are ongoing, including those on the operational transfer procedure following arrests of suspects and accused, the enforcement of sentences, the medical treatment of detainees and additional agreements on the relocation of witnesses.

B. Administrative and Support Activities

15. As of April 2005, the three organs of the Special Court – the Chambers, the Office of the Prosecutor and the Registry (including the Office of the Principal Defender) – had a total combined staff of 340 locally- and internationally-recruited personnel. In addition, an internship programme was formally established in January 2004 under which 10 funded and additional unfunded internships have been granted to Sierra Leonean and international junior professionals during 2004/2005. The total number of staff authorised in the current 2004/2005 budget is 341 and remained akin to that figure in the 2005/2006 proposal. However, as mentioned in the Registrar's foreword to the 2005/2006 budget, whilst this number constituted the overall number of posts estimated as being necessary for going into the next fiscal period which will still see the operational phase in full flow, the indications are that, during the period, a number of post reductions will occur, the majority of which will be inevitably in the Office of the Prosecutor. That Office estimates about 37% of their asset complement to be reduced during the period.

16. With respect to the facilities of the Special Court, assessments made by United Nations teams in September 2000[18] and January 2002[19] concluded that none of the facilities and buildings proposed by the Government of Sierra Leone to accommodate the Special Court were suitable, due to the high cost of required renovations or substantial security risks. As a result, it was recommended that the courthouse would be constructed as a permanent building and that office facilities be accommodated in prefabricated

[17] Practice Direction on Filing Documents before the Special Court for Sierra Leone (adopted on 27 February 2003 and amended on 1 June 2004); Practice Direction on the Procedure Following a Request by a State, the Truth and Reconciliation Commission, or other Legitimate Authority to Take a Statement from a Person in the Custody of the Special Court for Sierra Leone (adopted on 9 September 2003 and amended on 4 October 2003); Practice Direction on Filing Documents under Rule 72 of the Rules of Procedure and Evidence before the Appeals Chamber of the Special Court for Sierra Leone (adopted on 22 September 2003); Practice Direction on Disclosure by the Prosecutor Pursuant to Rule 66 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (adopted on 23 February 2004); Practice Direction on Allowances for Witnesses and Expert Witnesses (adopted on 16 July 2004).

[18] Secretary-General's Report, paragraph 60.

[19] Report of the Planning Mission on the Establishment of the Special Court for Sierra Leone ("Planning Mission Report"), S/2002/246, paragraph 17.

structures.[20] Prefabricated structures could be obtained and erected quickly, and could also be easily added on or moved according to the Special Court's changing space needs.[21]

17. Initially, the Office of the Prosecutor and the Registry were located at two temporary sites, Seaview (a rented building) and the Bank of Sierra Leone complex (facilitated by the Government of Sierra Leone) respectively. In January 2003, the Registry moved to the prefabricated office facilities set up on the permanent premises of the Special Court in New England, Freetown. During July 2003, the Office of the Prosecutor moved to the site, with Seaview retaining a much reduced operational role.

18. From July 2003, a small building on the New England site which was specifically renovated as a temporary courthouse was used by the Trial Chamber and the Appeals Chamber for hearings. On 10 March 2004, the opening ceremony for a newly-constructed permanent courthouse with two state-of-the-art courtrooms was held, attended by the President of Sierra Leone and the United Nations Legal Counsel on behalf of the Secretary-General. The courthouse was designed by a UK-based architectural firm (selected as a result of a design competition) and was constructed by a Sierra Leonean-based construction company. Additional buildings have since been constructed, including a new office block, temporary accommodation for witnesses, and a canteen for Special Court staff.

19. To support the judicial and institutional activities of the Special Court, a number of offices were established within the Registry which are now fully operational. These include:

a. the Court Management Section, which is responsible for the filing and service of court documents; the maintenance of transcripts and audio-visual recordings of court proceedings and the general smooth running of court proceedings; and the management of the Special Court library, which provides access to computer databases and jurisprudence from global sources;

b. the Outreach Section, whose Regional Officers upcountry and in Freetown ensure two-way communications between the Special Court and the population of Sierra Leone through sensitisation/familiarisation meetings, radio programmes, publications and Accountability Now Clubs for university students;

c. the Press and Public Affairs Office, which serves as a link between the Special Court and the national and international media by issuing press releases, holding press conferences and producing radio and other programmes for the purpose of providing accurate, accessible and understandable information about the Special Court. In particular, the regular production of both audio and video summaries of the trials for viewing locally by the Sierra Leonean public across the country has been an innovative feature;

d. the Witnesses and Victims Section, which provides protection and support to witnesses and victims who provide evidence before the Special Court. The section is protecting a significant number of witnesses both in Sierra Leone and in Europe and North America;

20. The location of the Special Court in the country where the conflict took place has required the allocation of a significant part of the Special Court's budget to security-related matters. The security and safety of Special Court personnel and premises are currently provided by Special Court security staff, the Sierra

[20] Id., paragraph 18.
[21] Id., paragraph 19.

Leonean Police and troops of the United Nations Mission in Sierra Leone (UNAMSIL).[22] The crucial issue of ongoing security is dealt with in more detail later in this paper at paragraphs 50 and 51.

III. COMPLETION PHASE

A. Trials Completion Strategy

1. Courtroom Capacity

21. A total of five cases are currently pending before the Special Court. Of these, the CDF, RUF and AFRC trials involve the nine accused who are presently in the custody of the Special Court, while two trials involve accused who are yet to be brought before the Special Court. Additional trials may be required if the Prosecutor issues further indictments.

22. In order to meet the operational goals of the Special Court within a reasonable timeframe, the Special Court notes that, in the context of the complex process of conducting its trials, all the key elements need to come together at the right time. The court is working to that end by way of pro-active trial management.

23. In comparison with the submissions contained in the Completion Strategy document approved in October 2004, the Special Court now finds itself in a better position to be able to estimate the trial-related requirements. This is due to a significant increase in the efficiency of trial management for the first Trial Chamber as well as to the trial-related indicators emanating from the new second Trial Chamber which started its operations in March 2005.

24. The Registry notes that the events before the Trial Chambers are, to a large extent, driven by the parties before it (by way of the presentation of both documentary evidence and witness testimony) and the subsequent decisions made by the Trial Chamber. These areas, which are neither within the direct ambit nor under the control of the Registry for a variety of reasons, including judicial independence, are examined under sub-headings 2 and 3 below.

25. The initial trial schedule for the period June to July 2004 was based on an initial target of 160 court days per year, with an intention of achieving an average of 5.0 court hours per court day.

26. In order to assist and support the existing Trial Chamber in meeting its objectives of making optimum use of these court days available, a Judicial Services Co-ordinating Committee was put in place, chaired by the Court Management Section and including representatives from Prosecution, Defence, Chambers, and Witness and Victims Support. This initiative has since proved to have been effective. The co-ordination between the parties to the proceedings and those Registry Sections involved has significantly increased the efficiency of courtroom usage and kept the discussion relating to these issues out of the courtroom proceedings themselves, thereby making more efficient use of court time. Data relating to courtroom usage has been included in the monthly updates provided to the Management Committee since October 2004.

---

[22] According to the Agreement, the Government of Sierra Leone has the responsibility under international law to ensure the security, safety and protection of Special Court personnel, Defence counsel and witnesses. However, the Agreement also recognises the "present incapacity [of the Government of Sierra Leone] to do so pending the restructuring and rebuilding of its security forces," and therefore requires that UNAMSIL provide the "necessary security to premises and personnel of the Special Court, subject to an appropriate mandate by the Security Council and within its capabilities." Agreement, Article 16. See also Headquarters Agreement between the Republic of Sierra Leone and the Special Court for Sierra Leone, Article 6.

27. Following internal discussions within the Special Court, the Registry identified an increased availability to 180 court days per year, with an intention to achieve an average of 6.0 court hours per court day, which represents the maximum obtainable in the court's operational settings, in view of annual leave, Occasional Recuperative Break (ORB) days and official holidays. However, it was recognised that those respective targets were ambitious when set against both the experience of the other *ad hoc* Tribunals and, indeed, against performance in national jurisdictions, *e.g.* the average court times in England and Wales (4.3 court hours per court day).

2. *Factors Influencing the Progress of the Trial Process*

a. Number of Witnesses

28. As stated in the Completion Strategy paper approved in October 2004, a significant part of the evidence presented by the Prosecution and the Defence has taken the form of witness testimony, therefore determining the pace and length of trials. The Registry has now been provided with updated estimates by the Prosecutor and the Principal Defender relating to the number of witnesses expected to be called for the CDF, RUF and AFRC trials respectively and has observed a significant reduction in numbers in comparison to the previous estimates. The Prosecutor provided estimates of the number of witnesses for the Prosecution Case and any Prosecution Rebuttal. Based on these numbers, the Principal Defender, in consultation with the Defence teams, estimated the number of witnesses likely to be called for each Defence Case. As a result, it is estimated that 166 witnesses will be called for the CDF trial, 206 witnesses will be called for the RUF trial and another 140 witnesses will be called for the AFRC trials, bringing the total estimated number of witnesses to 512. This constitutes a significant decrease in comparison to the total estimated number presented in the completion strategy document presented in October 2004 (830). To date, 108 prosecution witnesses have been called and dealt with in all three ongoing trials.

29. It should be emphasised that the Office of the Principal Defender, in consultation with the Defence teams, has calculated its own witness numbers in order to mirror those of the Prosecution. This procedure reflects the balanced treatment both parties are entitled to receive from the Trial Chambers and is not necessarily an indication of the total number of witnesses that will be called by either party. Experience at the ICTY and ICTR has shown that, in general, the number of Defence witnesses tends to be somewhat lower than that of Prosecution witnesses.

30. Based on the current usage of court time as well as the actual witness hearing time, it is estimated that two of the three ongoing trials, namely the those of the CDF and the AFRC, could be completed at the trial chamber stage around the end of 2005 or early 2006. Taking into account an estimated time of appeals between 4 and 6 months, the appeals could be finished by mid-2006, at the end of the 2005/2006 fiscal year. The completion of the AFRC trial would, in theory, free up the second Trial Chamber to be able to commence another trial. On the assumption that it is possible to secure the transfer of Charles Taylor in the second half of 2005 (having noted various initiatives on the international level, as described below), the trial could commence as early as the beginning of 2006.

31. Based on the actual figures, the completion of the RUF trial at the trial chamber stage is estimated by the end of 2006. This would mean that the appeals stage would be completed by early to mid-2007. The Registry, in consultation with the other organs, is actively working to ensure that this provisional estimate is further improved and that the appeals stage be completed by the end of 2006. It should be noted, however, that the appeals stage will require a smaller establishment compared to the trial stage.

32. These estimates, however, are subject to a number of variables that might influence the duration of the different trial stages. These factors are set out below:

b. Duration of the various trial stages

33. Other additional factors need to be taken into account, including the time necessary for the sentencing procedure; the time necessary to draft judgements; and the frequency and duration of judicial recesses.[23]

34. Other variables which may result in either longer or shorter trials include the number and nature of motions that may be filed; practical and logistical impediments to the conduct of proceedings; the possibility of guilty pleas; changes to the court schedule; the illness or sudden unavailability of key individuals participating in the proceedings; and amendments to the Rules of Procedure and Evidence which result in additional or lesser time requirements.

35. Trials at the Special Court may also take additional time due to specific factors such as the location of the Special Court in Sierra Leone amidst the still fragile and unpredictable political and security climate; and the need for protective measures and security arrangements for the majority of witnesses testifying before the Special Court.

36. While the Registry is able to estimate the potential length of the CDF, RUF and AFRC trials, the fact that two of the accused, Charles Ghankay Taylor and Johnny Paul Koroma, remain at large and therefore cannot be tried until they appear before the Special Court, may still affect the completion of all trials. Under the Rules of Procedure and Evidence of the Special Court, an accused may not be tried in his absence unless he has made his initial appearance and has been afforded the right to appear at trial but has refused to do so, or alternatively, has made his initial appearance but is at large and refuses to appear in court.[24] As noted above, Taylor is currently residing in Nigeria where he has been afforded asylum, while Koroma's whereabouts remain unknown. Until both accused are brought before the Special Court or the indictments against them withdrawn, it is not possible to determine when all trials may be completed. The Special Court notes with satisfaction and gratitude the recent initiatives taken by the international community to urge Nigeria to transfer Charles Taylor to the custody of the Special Court and the Court remains committed to use all appropriate means at its disposal, with the ongoing assistance of the international community, to ensure the apprehension and transfer of all indictees.

37. While the Special Court is aware that the international community has, in principle, aimed for the work of the institution to be completed within three years, even if all current accused are brought before the Special Court, the inherent unpredictability of the judicial proceedings renders it difficult to estimate the end date for all trials. In this regard, it should be emphasised that the Secretary-General indicated that three years would be the minimum time required to carry out trials[25], although pledges for voluntary contributions were only sought for a three-year lifespan. This is recognised in the Agreement, which provides that the Judges, the Registrar and the Prosecutor shall be appointed to three-year terms, and shall be eligible for re-appointment.[26] In addition, the Agreement refers to the "first three years" of the

[23] To date, judicial recesses have been called in December (three weeks), April (two weeks) and August (three weeks), in accordance with the applicable rules and regulations of the Special Court regarding leave and recuperative breaks for judges and staff. In addition, adjournments and other non-recess periods during which the Trial Chamber is not sitting in court (e.g., to attend to other Special Court matters not relating to trials) must also be considered in estimating the length of trials.

[24] Rules of Procedure and Evidence of the Special Court for Sierra Leone ("Rules of Procedure and Evidence"), Rule 60 (A).

[25] Letter dated 12 January 2001 from the Secretary-General, *supra* fn. 2.

[26] Agreement, Articles 2 – 5.

Special Court's operations with respect to its financing.[27] The need for judicial efficiency and speedy trials must be balanced by the requirements of judicial fairness and the proper administration of justice.

3. Administrative Factors

38. In addition to the above-mentioned courtroom capacity and the factors influencing the conduct of the trial process, the Special Court depends on a number of administrative factors which need to be secured for the institution to be able to meet its objectives.

39. First, stabilised funding needs to be secured in order to enable the Special Court to take the necessary steps with regard to its completion strategy. A detailed account of past funding is given in Chapter IV of this paper.

40. Second, the Court requires a clear fundraising strategy in order to secure the stabilised funding necessary for its completion and post-completion work, from January 2006 onwards. In this regard, the Registry has identified a fundraising consultant, funded by the Ford Foundation, who is at present developing a fund-raising strategy, a draft of which will be submitted to the Management Committee in the near future for their approval.

41. Third, the conduct of the work of the Special Court is highly dependent upon the security situation in Sierra Leone. While the current situation can be described as relatively stable, any changes could have far-reaching consequences for the Court, especially in light of the impending departure of UNAMSIL.

42. Fourth, the Special Court needs to maintain its ability to recruit and retain staff, especially during the completion stage in order to counter a possible damaging loss of its most experienced staff in the most crucial stage of its operations, with the inevitable impact on both performance and morale.

B. Appeals and Subsequent Actions

1. Appeals and Transfer of Sentenced Persons

43. Judicial proceedings will not end with the completion of trials, as the Trial Chamber's judgements and sentences, including acquittals, will be subject to appeal.[28] It should be noted that, at the time of the drafting of this paper, no data relating to the appeals of judgements exists within the Special Court, since no judgements have been rendered to date. The scope of possible judicial grounds for appeals seems, therefore, to be potentially broad.

44. However, in reaching estimates of the length of any appeals proceedings, the time needed for the issuance of the Trial Chamber's written judgements and sentences (and any translations which may be required), the filing of submissions by the Parties (which will take a minimum of 40 days pursuant to the relevant provisions of the Rules of Procedure and Evidence),[29] the conduct of any hearings, and the drafting of appeals judgements must be considered. Further, additional time will be required if the Appeals Chamber orders in its judgements that an accused be re-tried.[30] This will add considerably to the time necessary to complete a given case, and in turn to the total time necessary for the completion of all cases. As has been indicated earlier, it is impossible at this stage of the proceedings to provide any realistic estimate.

---

[27] Agreement, Article 6.
[28] Rules of Procedure and Evidence, Rule 106 (A) and Rule 99 (B).
[29] Rules of Procedure and Evidence, Rules 111 – 113.
[30] Rules of Procedure and Evidence, Rule 118 (C).

45. After final judgements are issued, the time required to transfer convicted persons to appropriate prisons to serve their sentences will depend on the outcome of negotiations on bilateral agreements on the enforcement of sentences, as well as the implementation of any such agreements. The Statute provides that imprisonment is to be served in: a) Sierra Leone; b) a State which has entered into an enforcement agreement with the International Criminal Tribunal for Rwanda (ICTR) or the ICTY and which has indicated a willingness to accept persons convicted by the Special Court; or c) other States which have entered into enforcement agreements with the Special Court.[31] It is unlikely that sentences will be served in Sierra Leone due to the poor conditions and overcrowded capacity of its prisons compounded by the high incidence of escapes; the current state of the Sierra Leonean law enforcement and security forces; and the frailty of the overall political and security situation.[32] Sentences therefore will most probably be enforced in prisons outside of Sierra Leone rather than within the country, at least for the foreseeable future.

46. The Registrar began negotiations to reach enforcement agreements in November 2003. As of April 2005, two agreements have been signed with two more negotiations nearing a conclusion. However, it must be noted that the number of States potentially willing to enter into enforcement agreements is limited due to the shortage of States which meet all, or most, of the necessary criteria. These include a stable political environment; the capacity of security, law enforcement and correctional agencies; the conformity of prison conditions to international human rights standards;[33] the capacity to meet the linguistic and socio-cultural needs of convicted persons; the proximity to convicted persons' families; and the capacity to bear the relevant costs.

2. Completion of Administrative and Support Activities

47. As its judicial and institutional activities reach a peak and subsequently wind down, the Special Court will be required to take actions with respect to administrative and support matters. One matter which will require careful and continuous planning will be the downsizing of personnel. It was always likely that fewer investigation staff, for example, would be necessary as investigations were completed and trials began. The nature and quantity of personnel and other resource needs will also change dramatically between the trial and post-trial appellate phases. A schedule will need to be formulated detailing the gradual elimination or re-assignment of posts, along with the financial and budgetary implications of such adjustments. Some contracts may need to be terminated prior to their expiration, with sufficient notice and career guidance to those affected. The downsizing of local staff will need to be treated particularly sensitively, as their post-Special Court employment opportunities are likely to be more limited than those of international staff.

48. Special efforts must also be made to retain key personnel who may otherwise resign to take up new opportunities as the conclusion of the Special Court draws near. Serious consideration should be given to assisting such personnel in procuring post-Special Court employment as well as providing other

[31] Statute of the Special Court for Sierra Leone ("Statute"), Article 22. See also Rules of Procedure and Evidence, Rule 103.

[32] The Secretary-General has stated that "while imprisonment shall normally be in Sierra Leone, particular circumstances, such as the security risk entailed in the continued imprisonment of some of the convicted persons on Sierra Leonean territory, may require their relocation to a third State." Secretary-General's Report, paragraph 49. The Secretary-General also noted the preference of the Government of Sierra Leone for enforcement to take place in an East African State. Id., paragraph 50.

[33] Pursuant to its agreements on the enforcement of sentences with Benin, Mali and Swaziland respectively, the ICTR has undertaken to approach donor countries for funding so that prison conditions in these States can be upgraded to conform to international standards. Agreement between the Government of the Republic of Benin and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda, Article 11; Agreement between the Government of the Republic of Mali and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda , Article 11; and *Accord entre le Royaume de Swaziland et L'Organisation des Nations Unies concernant l'exécution des peines prononcées par le Tribunal pénal international pour le Rwanda*, Article 11.

appropriate "incentives" to remain with the Special Court for the required time. The operation of the Special Court and its ability to complete its mandate in a satisfactory and timely manner may otherwise be greatly compromised. The formulation and subsequent implementation of transparent personnel guidelines is, therefore, required in order to counter a possible decrease of staff morale.

49. Arrangements will need to be made with respect to contractors, facilities and equipment. Contracts and commercial arrangements will need to be settled, and in some cases, may require re-negotiation. Appropriate and timely handover of property to the Government of Sierra Leone and other beneficiaries, and the liquidation of any other property, must also be planned and carried out. Training must also be provided to ensure the proper handling and maintenance of facilities and equipment donated by the Special Court.

50. Finally, the safety and security of its premises and personnel will need careful review on a continual basis. As noted above, UNAMSIL troops are currently essential in maintaining the security of the Special Court. The Security Section in conjunction with UNAMSIL, the Sierra Leone Police and the Sierra Leone Office of National Security continue to monitor potential security threats to the Special Court. Presently the capability of groups opposed to the Court appears to be low. However there is clear evidence that AFRC/RUF and CDF members continue to actively seek information on the Special Court's security arrangements. Reliable reporting indicates that visitors to the Courts' public gallery and visitors to the detainees have used the opportunity to gather information on military and security guard dispositions. Additionally, evidence indicates that there are active efforts by former CDF and AFRC members to gain access to witnesses. Thus, while the situation remains outwardly calm, the Special Court assesses that there is a security threat against the Special Court posed by supporters of the detainees who continue to seek an opportunity to disrupt the judicial process. The Court's position on this front is not expected to be tested until after UNAMSIL draws down by 31 December 2005. The continued presence of international troops dedicated to the protection of Special Court facilities and staff is deemed critical at least until the trial proceedings are concluded and Sierra Leone security organizations develop the capability to ensure the security of the Special Court and its staff.

51. To that end, there recently has been a significant number of discussions including UNAMSIL, the Department of Peacekeeping Operations, military and civilian police advisors, the Office of Legal Affairs and the Special Court to identify the various options available and, based on these options, select and implement an appropriate security regime. The Government of Sierra Leone has been kept informed of the progress and will also be consulted once a regime has been identified.

C. Proposed Actions of the Special Court Management

1. Reporting to the Management Committee

52. The Registry will continue its pro-active approach with regard to trial management. In addition to the inclusion of courtroom usage data in its monthly status reports and additional liaison with the Management Committee, the co-operation was further enhanced during a fact-finding mission by the Management Committee to the Special Court in March 2005. To that end, the Court 's Liaison Officer in New York continues to play an important role in, amongst other matters, strengthening that relationship.

2. Representations to the Organs within the Special Court

53. The Registry will, through the appropriate internal channels, including the periodical meetings of the Judicial Services Co-ordinating Committee, continue to stress the need for efficient trial management as

the cornerstone of the Special Court's mission. The senior management of all organs will take the necessary steps in this regard, with due regard to judicial independence.

54. In addition, the Registry will continue to use the completion strategy paper (in its most recent version) as a general guideline for the implementation of its overall policy with regard to the completion and post-completion phases. The Management Committee will be informed with regard to the internal measures taken in accordance with this policy.

IV. FUNDING

55. Under the Agreement, the expenses of the Special Court are to be borne by voluntary contributions from the international community, and the establishment of the Special Court would commence once the Secretary-General had contributions for 12 months of operations and pledges for an additional 24 months of operations.[34] Accordingly, the Secretary-General initially estimated that the Special Court would cost US$ 30.2 million in its first year of operations and US$ 84.4 million in the following two years of operations, for a total of US$ 114.6 million.[35] However, donor States were not prepared to finance the Special Court to that extent and the initial three year estimate, against which donations and pledges were secured, was lowered to approximately US$ 57 million for the period 1 July 2002 to 30 June 2005.[36]

56. The Special Court operated on a budget of US$ 19.219 million in its first year of operations (1 July 2002 – 30 June 2003) and a budget of US$ 32.534 million in its second year of operations (1 July 2003 – 30 June 2004). The budget required for the current third year of operations (1 July 2004 – 30 June 2005) is US$ 29.9 million. The Management Committee has approved the Court's proposed budget for the fourth year in the sum of US$ 25.5 million.

57. As of December 2004, the Special Court had received a total of US$ 54.9 million in voluntary contributions from 33 States. Given its anticipated three-year budget of US$ 82 million (July 2002 to June 2005), the Special Court faced a potential shortfall of US$ 28 million for the same period. In March 2004, due to continuing uncertainty that sufficient contributions would be secured, the Secretary-General sought a subvention from the General Assembly for US $40 million – US$ 16.7 million for the period 1 July to 31 December 2004 and the remaining US$ 23.3 million for 2005.[37] On 26 April 2004, the General Assembly authorised a subvention of up to US $16.7 million for the period 1 July to 31 December 2004, on the understanding that any regular budget funds appropriated for the Court would be refunded to the UN at the time of liquidation of the Court, should sufficient voluntary contributions be received.[38] As at 31 December 2004, the Special Court had not required access to the subvention funding and the General Assembly in its Resolution A/RES/59/276 authorised the Secretary General to enter into commitments not exceeding $20 million with effect from 1 January 2005 to 30 June 2005.

58. At the time of preparing this paper the present situation is that, following a meeting of the ACABQ on 19 April 2005, attended by the Registrar and colleagues from Freetown by video conference, a recommendation has been made by the ACABQ to the Fifth Committee that the Court be given US $ 13 million up until the end of 2005 with further consideration to be given to the remaining US $ 7 million in the next UN biennium. The Special Court noted with appreciation the assistance of the Secretary General, the Management Committee, the Budgetary Division of the United Nations, and the Advisory

[34] Agreement, Article 6.
[35] Letter dated 12 July 2001 from the Secretary-General, S/2001/693, paragraph 3.
[36] Id., paragraph 5.
[37] Request for a Subvention to the Special Court for Sierra Leone, Report of the Secretary-General, A/58/733, 15 March 2004.
[38] General Assembly Resolution 58/284, A/RES/58/284, paragraph 2.

Committee on Administrative and Budgetary Questions in the budgetary process for the financing of the Special Court until the end of 2005, through the above-mentioned subvention grant.

59. As stated above, it appears uncertain that the Special Court will have funding past December 2005. Alternative sources of funding will therefore be required as of January 2006, for the year 2006 as well as for the post-completion phase of its mandate. The Special Court has started its extra-budgetary planning with the fundraising consultant and will report to the Management Committee on the progress made in this regard.